

Montana MS4 Working Group

Meeting Summary

Helena, MT.

January 13, 2015

Attendees: The following entities were present; Butte-Silver Bow, City of Billings, City of Bozeman, City of Gt. Falls, City of Helena, City of Kalispell, City of Missoula, Clark Fork Coalition, Montana Department of Environmental Quality, Montana Environmental Information Center, U.S. Environmental Protection Agency, and Yellowstone County. Beck Consulting and HDR Inc. are under contract to support the group. Please see attached sign-in sheet for individual attendees.

Meeting Outcomes

- 1) WG has been initiated. WG purpose, expectations, how WG will operate has been agreed upon.
- 2) Standard forms that will be needed have been identified.
- 3) Language in Part I of the General Permit has been reviewed by WG.
- 4) Discussion of “waters of the state” has been initiated.

Kick-off and Welcome

Facilitator, Barb Beck, did a quick review of the meeting outcomes and the agenda, and asked the group to abide by several ground rules. Participants introduced themselves. The group will strive for decision-making by consensus. The facilitator is a neutral party, not a technical expert, to help keep the group on track. Barb will also be producing meeting summaries.

Vern Heisler, Deputy Public Works Director, City of Billings, welcomed the participants and thanked everyone for coming. He explained that the cities have been given an opportunity to work with the DEQ in a collaborative process on the MS4 permit and thanked the DEQ for the opportunity. The DEQ has agreed to use the existing MS4 permit for the next two years while this group works towards consensus on the updated permit.

Along with this opportunity comes a responsibility to achieve consensus in the next 18 months. There is a lot of work to do and the group will need to make continual progress to get through the issues. Vern believes we can do this and get it done. The two contractors will be supporting the effort. These meetings are the result of the MOU between the seven cities and the DEQ. While there are other MS4 permit holders (UM, MSU, Malmstrom AFB, MDT, etc.), optimal group size for working through issues was a consideration.

The 18-month timeframe for completion of the permit language is derived by the fact that the current MS4 permit expires on December 31, 2016. The work of the group needs to be completed no later than six months prior to that date. This will allow DEQ time to go through the administrative processes necessary to adopt the new permit requirements and have them in place by the expiration date.

Roles of Various Entities

The group discussed the fact that there are MS4 permit holders in Montana that are not part of this group. Everyone believes it is critically important to coordinate and share information with these other efforts—MDT and the counties for example. Yellowstone County was represented at this meeting and conveyed that the three affected counties (Yellowstone, Cascade, and Missoula) are very interested in the work of this group. Vern and Amanda will be tracking the discussions between DEQ and the counties to maximize consistency of the efforts. All participants agreed that consistency is desirable and necessary.

Cities: This document has a big effect on the cities and cities have raised concerns. Role is to help produce a reasonable document. City of Bozeman is sharing information about this effort with MSU and City of Missoula intends to do so with UM.

DEQ: This group is a cities' group in which DEQ is participating. DEQ has regulatory responsibility and pressure from EPA to recognize that the status quo is not an option going into the future. DEQ wants to work collaboratively recognizing their regulatory responsibilities—this is a balancing act.

EPA: EPA views their role as one of listening and keeping their fingers on the pulse of this work. They agreed to allow use of the existing permit for the next two years because of the formation and intent of this work group. There is a national push for more tracking and measurement. EPA can serve as a technical resource and share information about what is happening in other states. EPA can also share information about the National Storm Water Working Group.

HDR, Inc: HDR is providing technical expertise in support of the group and will do homework or staff work between meetings (drafting up standard forms, drafting permit language, compiling comments from cities, etc.) as well as participating in the meetings.

Conservation Groups: MEIC and Clarks Fork Coalition were present. Trout Unlimited was invited but not in attendance. Vern explained that during the planning, there was a desire to have these interests represented and these groups were picked because they represent broad memberships.

Public: The group wants their work to be open and transparent. The public will have access to meeting agendas and a slot on each agenda to offer comments. Additionally, the eventual product will go through DEQ's administrative process which includes a formal public review (likely including a public hearing) and comment process.

Participants generally agreed the group will operate as follows;

- decisions will be made by consensus,
- the group will discuss issues at the concept level (not try to word smith),
- HDR/Amanda will draft language reflective of the discussion and provide it to the group members one week ahead of the meeting during which there will be discussion,
- the group envisions an iterative process with suggested language, comments, revisions, etc.
- real world examples tied to permit sections are helpful for illustrating implementation problems,
- the group will focus on one or more of the seven control measures at each meeting,
- the control measure(s) selected for discussion don't have to be in the order of the permit and the group will consider any other factors related to timeliness of the issue for either the DEQ or the cities when selecting the control measure to be discussed at the following meeting,
- the group wants to avoid duplication of effort (for example in creating electronic forms),
- coordination with the other permittee groups should be regular and meaningful,
- consistency is desired, standardization is legally defensible,

- the group will meet monthly, in person, in Helena, (phone or video conference is a back-up)
- meetings are open to the public and agendas should be publicly available on the DEQ website if possible listing Vern Heisler as the contact for more information,
- the public will be given an opportunity to comment during each meeting, time given to public input will be managed if large numbers of people wish to comment at future meetings,
- the City of Billings will post meeting summaries/notes on their website.

The MS4 permit control measures and other major topic areas are; Program Management, Public Education and Outreach, Public Involvement and Participation, Illicit Discharge Detection and Elimination, Construction Site Storm Water Management, Post Construction Site Storm Water Management, Pollution Prevention/Good Housekeeping, Reporting and Monitoring, and Special Conditions.

Concerns/challenges

Participants identified challenges that will need to be addressed for this effort to be successful. With these identified up front, the group can work to ensure they are addressed during the process.

- There has been a long history with MS4 and there have been sticking points in the past, for example defining “state waters.” How will we get past these sticking points? What is different this time? We have fresh faces looking forward now.
- How will such things as approved TMDL’s, waste load allocations, water quality compliance, be addressed? What is the point of regulation?
- The work needs to be completed in a defined time period of 18 months. There is a lot of work ahead for the group.
- We may produce a consensus product and then there will be a legal challenge. Who are the stakeholders? DEQ will get input, how will DEQ respond? There is increasing interest in this.
- We want to include appropriate stakeholders, but don’t want to bog down the process. The work of this group will be fairly technical in nature, that’s who is at the table now.
- We need to continue the discussion about who to invite into the process.
- Given the amount of work that needs to be done, subcommittees could be used for technical pieces (but are not necessarily appropriate for the policy pieces.)
- DEQ and the cities appear to be far apart on several subjects—such as annual reporting, parity, and monitoring. DEQ and the cities appear to be together on many other subjects.
- It would be desirable for part of the outcome to be more efficiency with electronic forms (for NOI’s and SWPPP’s.)

Products and Timeframes

Amanda McGinnis with HDR explained that she had compiled a list of standardized forms that could be helpful by going through the TetraTech permit draft language. She gave some examples that included reporting and training. Amanda expects that the group will want HDR to develop some of these forms and they are available and able to do so. Electronic forms would be very helpful to the cities if they can be accommodated by the DEQ. Amanda discussed having one document for the permit language and a second document with all of the standardized forms that DEQ and the cities will want and need. The WG including MDEQ seemed to like this idea.

The timeframe for the working group products was discussed in the Kick-off and Welcome section.

General Permit Section I. Permit Coverage

The group was asked if anyone had concerns about language in the proposed TetraTech permit draft prepared for MDEQ, the cities, and counties. Amanda pointed out that the counties would be raising concerns about the language in Section E.2. County growth areas.

The discussion then shifted to Section A. Discharges Authorized and the definition of “discharge” and “state waters”, and discharging to ground water vs surface waters. DEQ Legal Counsel, Kurt Moser explained that from DEQ’s perspective the MS4 permit does not make a distinction between discharging to ground or surface waters. The important distinction is whether an area is within an MS4 geographical boundary. The cities expressed some frustration about what they see as lack of clarity of the terms in the TetraTech permit draft—making it difficult to implement consistently. The group shifted discussion to waters of the state. The facilitator proposed capturing the facts about waters of the state as a means of problem definition.

- The state is currently regulating this through the MS4 permit.
- MS4s want to comply.
- Terms in the TetraTech permit draft are unclear and are subject to interpretation. This causes problems.
- MS4s are unclear about the standards they need to impose on developers.
- The compliance point is not clear/consistent to the cities.
- The original permit was more focused on monitoring than the proposed TetraTech permit draft language which focuses more on Best Management Practices or BMP’s.
- MS4 permits are different than other water permits in terms of clarity of expectations (less clear.)
- All MS4s are defined the same—by EPA.
- Implementation is difficult. There are examples that can illustrate this.
- From DEQ’s standpoint, the legal situation is clear. The regulatory intent is not clear.
- It is not clear what we are trying to accomplish.

After some discussion on this topic, the group decided more progress could be made by coming back at the next meeting prepared to talk about specific situations where problems have been encountered. See the action items and assignments at the end of these notes for next steps on this subject.

The ideal situation would be clarity about outcomes and expectations with flexibility in implementation. The group did not reach consensus on accepting the language in Section I.

Public Comment

There was one public commenter.

John Rundquist representing the Montana Environmental Information Center offered two comments;

- 1) John supported the idea of developing a statewide handbook relating to the MS4 permit that everyone could use, and

- 2) John suggested that the language in the County Growth Areas section of the TetraTech permit draft needs work and that it should apply to any rural area.

Wrap-up

The group reviewed action items and evaluated the meeting.

Action Items and Follow-up

Assignment	Who	When
Update and maintain e-mail contact list for group and set up contact list for interested parties	McInnis	Ongoing
Produce meeting summary from this meeting, provide to Amanda for distribution	Beck	1/8/2015
Post meeting notes on City of Billings website	Heisler/Krizek	Ongoing
Determine if possible to post meeting agendas on DEQ website	DeArment	
Forward Waterkeeper's letter to work group participants	McInnis	
Review EPA's draft language, consolidate cities' comments and mark-up	McInnis	
Mark-up Post Construction Site Storm Water section of permit for discussion at February mtg	McInnis	
Let the group know if there is a comment deadline for EPA's Post Construction Site BMP's draft	Kusneirz	
Send out poll for February-April meeting dates, secure meeting location for February, make lunch arrangements, develop phone back-up mtg plan	Heisler	
Develop up to a 15-minute presentation of examples with issues in implementing the MS4 permit requirements and recommendations	7 cities	February meeting
Send out February meeting pre-work	McInnis	One week prior to meeting
Send meeting agendas to Rainie DeVaney ahead of meeting for posting on DEQ website	McInnis	One week prior to meeting

Agenda Items for February 2015 Meeting

- Quick updates on the other groups working with DEQ on MS4 permits (Counties, MDT, etc.)
- EPA update on the status of MS4 permits in other EPA Region VIII states
- EPA draft on Post Construction Site Storm Water Management
- Post Construction Site Storm Water Management Permit Section of TetraTech permit draft
- Waters of the State discussion (see action items)
- Public comment period

Meeting dates for February through April to be determined through an online poll set up by Vern.

MS4 Working Group

Helena, MT.

January 13, 2104

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